

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LEROY HARRIS,

Plaintiff,

v.

CLARK COUNTY SCHOOL DISTRICT,

Defendant.

Case No. 2:23-cv-00259-MMD-MDC

ORDER

I. SUMMARY

Pro se Plaintiff Leroy Harris sued his former employer, Defendant Clark County School District (“CCSD”), under the Americans with Disabilities Act of 1990 (“ADA”) for allegedly failing to rehire him because he has a disability. (ECF No. 50 (“SAC”¹).) Before the Court is Defendant’s motion for summary judgement.² (ECF No. 56 (“Motion”).) As further explained below, the Court will grant the Motion because Plaintiff fails to establish a prime facie case of discrimination.

II. FACTUAL BACKGROUND³

In the fall of 2017, Plaintiff became a probationary⁴ physical education teacher at Bunker Elementary School. (ECF No. 56-6 at 30.) His duties included but were not limited to teaching physical education, classroom management, posting weekly lesson plans,

¹In his SAC, Plaintiff incorrectly states that his first amended complaint is the operative complaint in this case. (ECF No. 50 at 1.) Upon filing, the SAC became the operative complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (“[A]fter amendment the original pleading no longer performs any function and is treated thereafter as non-existent”) (internal quotation marks and citation omitted). The SAC will therefore be treated as the operative complaint.

²Plaintiff responded (ECF No. 58) and Defendant replied (ECF No. 59).

³The facts that follow are undisputed unless otherwise noted.

⁴As a probationary employee, Plaintiff was not entitled to reemployment following any of the first three years of his probationary period. See NRS § 391.820(1).

1 and completing student learning goals. (ECF No. 56-2 at 7-8.) Principal Pauline Mills
2 supervised Plaintiff. (*Id.* at 7.)

3 **A. Wheelchair Ramp Removal and Replacement**

4 During the summer of 2018, the wheelchair ramp to Plaintiff's portable classroom
5 was removed. (ECF No. 56-3 at 3.) Principal Mills requested it be replaced throughout
6 the summer and fall of 2018. (*Id.*) In November 2018, Plaintiff wrote on a punch list that
7 the wheelchair ramp was still missing and students needed it for classroom access. (*Id.*
8 at 32.) He did not indicate that he personally needed the wheelchair ramp because of his
9 disability. (*Id.*) Plaintiff approached Principal Mills the following month about filing a
10 reasonable accommodation request with the Office of Diversity and Affirmative Action
11 Programs ("ODAA") for the wheelchair ramp's return, and Principal Mills encouraged him
12 to do so. (*Id.* at 3.) Plaintiff requested the wheelchair ramp to be reinstalled as an
13 accommodation with ODAA on December 26, 2018. (ECF No. 56-6 at 21.) The wheelchair
14 ramp was reinstalled over the weekend of January 19 and 20, 2019. (*Id.*)

15 **B. Plaintiff's Job Performance and Denial of Rehiring**

16 On March 23, 2018, Principal Mills issued Plaintiff an oral warning that his job
17 performance was below standard because he was "failing to adequately supervise
18 students during extracurricular activities, [] soliciting donations without administrative
19 approval,⁵ [] not following lesson plans, and [] not obtaining authorization prior to showing
20 a cartoon video during class." (ECF No. 56-3 at 2, 10.) Plaintiff was instructed to submit
21 a written supervision plan for his after school program, cease sending any school-related
22 communications to the community without approval, follow his lesson plan, implement
23 lessons based on grade level standards, maximize physical activity, get approval before
24 showing an educational video, do not show unrelated videos or give free time, review the
25 staff handbook, and "be honest and forthright in all [] interactions within the workplace."

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27 ⁵Plaintiff asserts in the SAC that this allegation is false. (ECF No. 50 at 5-6.)
28 However, Plaintiff himself attaches evidence of him soliciting a donation from Robco
Electric Company to pay for students' soccer league entry fee. (ECF No. 50 at 19.) While
Principal Mills is CC'ed on the letter, Plaintiff does not proffer evidence that he garnered
administrative approval before sending this letter.

1 (*Id.* at 11.) Plaintiff did not respond or grieve the warning. (ECF No. 56-2 at 25.) That
2 same day, Principal Mills issued Plaintiff's 2017-2018 evaluation, which rated his
3 performance as "developing." (ECF No. 56-3 at 15.).

4 On December 11, 2018, Principal Mills held an investigatory conference with
5 Plaintiff to discuss his substandard job performance. (*Id.* at 35-36.) Plaintiff received a
6 written warning a few days later that stated that his performance was "below standard
7 and must improve," and directed him to "[b]e respectful and professional at all times in
8 [the] workplace," plan, prepare, and execute age-appropriate lessons, create a classroom
9 management plan, and comply with all previously issued directives. (*Id.* at 38-39.)

10 Plaintiff's 2018-2019 evaluation was issued on March 21, 2019, and again rated
11 his performance as "developing." (*Id.* at 65.) His directives included completing his lesson
12 plans prior to the start of the work week, ensuring lessons were developmentally
13 appropriate, maximizing instructional time, and improving classroom management.
14 (*Id.* at 64.)

15 On April 26, 2019, Plaintiff received Notice of Non-Reemployment for "[f]ailure to
16 satisfy performance standards of the Clark County School District." (*Id.* at 67.) On May 2,
17 2019, Plaintiff emailed ODAA because he believed that his non-reemployment was
18 retaliation for seeking the return of the wheelchair ramp. (ECF No. 56-6 at 18.) On May
19 22, 2019, ODAA responded that it completed their investigation and were "unable to
20 substantiate [Plaintiff's] allegations of 'retaliation'." (*Id.* at 20.)

21 Plaintiff applied for reemployment with the District in June 2020. (ECF No. 56-8 at
22 2.) He applied for eight different positions. (ECF No. 50 at 13.) CCSD's Human Relations
23 Department ("HR") sent a request for information from the Employee-Management
24 Relations Department ("EMR") regarding "any pertinent information, such as, [sic]
25 discipline, grievance, early resolution, sick leaves review, fingerprints and status logs"
26 related to Plaintiff. (ECF No. 56-7 at 5-6.) EMR recommended HR not to rehire Plaintiff.
27 (*Id.* at 5.) EMR was not aware that Plaintiff had a disability. (*Id.* at 2.) HR decided not to
28 rehire Plaintiff based on the Notice of Non-Reemployment, his oral warning, his written

1 warning, and his “developing” rating from his 2017-2018 and 2018-2019 evaluations.
 2 (ECF No. 56-8 at 2.) During the process of reviewing job applications from former
 3 employees, HR does not request documents or information from ODAA. (*Id.* at 3.)

4 Plaintiff filed a Charge of Discrimination with the Nevada Equal Rights Commission
 5 (“NERC”) and the U.S. Equal Employment Opportunity Commission on January 26, 2021.
 6 (ECF No. 56-6 at 26.) In the Charge, Plaintiff alleged that his termination and denial of
 7 reemployment were in retaliation to his reasonable accommodation request and/or filing
 8 an internal discrimination complaint. (*Id.* at 26-27.) ODAA responded by informing NERC
 9 that Plaintiff was not rehired because he “was a poor performing probationary employee.”
 10 (*Id.* at 29.)

11 Plaintiff then initiated this action. In his SAC, Plaintiff brings one claim under Title
 12 I of the ADA for failure to hire. (ECF No. 50 at 12-13.) He alleges that Defendant refused
 13 to rehire him “because of his disabilities.” (*Id.* at 13.)

14 **III. DISCUSSION**

15 Defendant argues that Plaintiff cannot demonstrate a prima facie case of
 16 discrimination under Title I of the ADA because he has produced no evidence that he was
 17 not rehired because of his disability. (ECF No. 56 at 11.) Plaintiff responds that Defendant
 18 rejected him because of his disability and is flawed in its allegation that “Plaintiff was not
 19 qualified to work in CCSD.”⁶ (ECF No. 58 at 1, 10.) The Court agrees with Defendant.

20 The ADA provides in part that “[n]o covered entity shall discriminate against a
 21 qualified individual with a disability because of the disability of such individual in regard
 22 to . . . the hiring [of employees]” 42 U.S.C. § 12112(a). To prove a prima facie case
 23 of discrimination under the ADA, a plaintiff must demonstrate that (1) they are disabled
 24 under the ADA, (2) they are a qualified individual with a disability, and (3) they were
 25 discriminated against because of their disability. *See Bates v. United Parcel Service, Inc.*,

27 ⁶Plaintiff responds using a Title VII employment discrimination standard, which
 28 differs from the standard under the ADA. (ECF No. 58 at 7.) This standard is inapplicable
 here as Plaintiff sues only under the ADA. (ECF No. 50 at 2.) The Court considers
 Plaintiff’s arguments where the standards overlap and his assertions are relevant.

1 511 F.3d 974, 988 (9th Cir. 2007) (citing *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243,
2 1246 (9th Cir. 1999)). Regarding the third prong, a plaintiff must show that the adverse
3 employment action would not have occurred but for the disability. See *Murray v. Mayo*
4 *Clinic*, 934 F.3d 1101, 1107 (9th Cir. 2019) (“ADA discrimination claims under Title I must
5 be evaluated under a but-for causation standard.”).

6 If a plaintiff establishes a prima facie case of discrimination, the burden shifts to
7 Defendant to establish a non-discriminatory, legitimate reason for the adverse
8 employment action. See *Brown v. City of Tuscon*, 336 F.3d 1181, 1186-87 (9th Cir. 2003)
9 (citations omitted). The plaintiff must then show defendant’s proffered reasons are pretext
10 for discrimination. See *Bergene v. Salt River Project Agric. Improvement & Power Dist.*,
11 272 F.3d 1136, 1141 (9th Cir. 2001). A plaintiff can demonstrate pretext by either
12 persuading the court that a discriminatory reason more likely influenced the employer’s
13 decision or by showing the employer’s explanation is “unworthy of credence.” *Villiarimo*
14 *v. Aloha Island, Inc.*, 281 F.3d 1054, 1063 (9th Cir. 2002) (citation omitted).

15 Plaintiff fails to establish prima facie discrimination because he does not proffer
16 evidence that Defendant did not rehire him because of his disability.⁷ EMR was unaware
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27 ⁷The Court will address only the third prong of the prima facie discrimination
28 standard because failing to meet any of the prongs ends a claim. See *Kennedy v.*
Applause, Inc., 90 F.3d 1477, 1481 (9th Cir. 1996) (establishing that a plaintiff must show
all three elements).

1 that Plaintiff had a disability when it recommended not to rehire him,⁸ and HR did not
 2 request any information related to a possible disability when evaluating Plaintiff's
 3 applications. (ECF Nos. 56-7 at 2; 56-8 at 2.) Accordingly, HR could not have reasonably
 4 known about Plaintiff's disability, and by extension, could not have been influenced by it.
 5 *Cf. McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352, 360 (1995) ("The employer
 6 could not have been motivated by knowledge it did not have") Rather, HR explicitly
 7 stated that it did not rehire Plaintiff because of his poor work performance. (ECF No. 56-
 8 8 at 2.) Plaintiff proffers no evidence to the contrary.

9 Even if but-for causation existed to support prima facie case, Plaintiff cannot show
 10 HR's reason was a pretext for discrimination. Defendant proffered that it had a legitimate
 11 reason not to rehire Plaintiff: Plaintiff's long-documented poor job performance working
 12 for Defendant. This documentation began well before he requested an accommodation
 13 with ODAA, and Plaintiff has not proffered evidence beyond conclusory statements that
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 21 ⁸In his SAC, Plaintiff argues that evidence he proffers of emails between EMR and
 22 Principal Mills prove that they conspired to discredit him and prevent future employment
 23 with Defendant. (ECF No. 50 at 8.) However, the emails do not indicate any information
 of a possible conspiracy and do not mention Plaintiff's disability. Rather, they concern
 Principal Mill's seeking guidance on Plaintiff's unprofessional conduct and poor work
 performance. (*Id.* at 23-35.)

24 Plaintiff also argues that Mollie Hall, the Director of EMR, "deliberately misled the
 25 court" because she "knew Plaintiff had participated in protected activities." (*Id.* at 9.) He
 26 argues that EMR knew because it gave testimony to NERC regarding his Charge of
 27 Discrimination. (*Id.*) However, as Defendant notes, this claim is not supported by the
 28 chronology of evidence. (ECF No. 56 at 14.) ODAA did not receive Plaintiff's Charge of
 Discrimination until September 24, 2021, over a year after Plaintiff applied for
 reemployment. (ECF No. 56-6 at 26.) Accordingly, any communication between ODAA
 and EMR regarding the Charge would have occurred months after Plaintiff applied for
 reemployment. Plaintiff does not proffer other evidence that EMR knew about Plaintiff's
 disability prior to declining to rehire him.

1 his performance evaluations or warnings were created to serve as pretext.⁹ Plaintiff
2 himself did not grieve an oral warning he received. (ECF No. 56-2 at 25.) Ultimately,
3 Plaintiff's own performance record supports Defendant's legitimate reason not to rehire
4 him that is independent from and unrelated to his disability. Thus, Defendant had a
5 legitimate business reason for not rehiring Plaintiff, and Plaintiff cannot show that the
6 reason was a pretext for discrimination.

7 The Court will therefore grant Defendant's Motion because Plaintiff does not proffer
8 evidence that he was not rehired because of his disability nor that Defendant's proffer
9 reason was pretextual.

10 **IV. CONCLUSION**

11 The Court notes that the parties made several arguments and cited to several
12 cases not discussed above. The Court has reviewed these arguments and cases and
13 determines that they do not warrant discussion as they do not affect the outcome of the
14 Motion before the Court.

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21 ⁹Plaintiff appears to argue that pretext existed because several of his teacher
22 observations were not in compliance with state law. (ECF No. 50 at 6.) His assessment
23 is incorrect. Plaintiff explains that NRS § 391.680 requires a pre- and post-conference
24 meeting for each teacher observation, which he did not consistently receive. (*Id.*)
25 However, NRS § 391.685(1) and § 391.680(3) require that probationary teachers must
26 receive three scheduled observations throughout the year, and those scheduled
27 observations must have a pre- and post-conference meeting. Plaintiff did receive required
28 pre- and post-conference meetings for his three scheduled observations during the 2017-
2018 and 2018-2019, even if he did not receive these conferences for every observation.
(ECF No. 56-3 at 4.) Accordingly, his scheduled observations complied with state law.
But if these observations had violated state law, Plaintiff does not explain or proffer
evidence explaining why doing so arises to pretext.

1 It is therefore ordered that Defendant Clark County School's motion for summary
2 judgment (ECF No. 56) is granted.

3 The Clerk of Court is accordingly directed to enter judgment in favor of Defendant
4 and close this case.

5 DATED THIS 5th Day of March 2025.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

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8 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE
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